BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A
Opinion of the Court Below

The opinion of the Supreme Court of Arkansas, at time of this writing, is not officially reported but appears in the Record at pages 30 to 37.

B
Jurisdiction

1. *Timeliness.*

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)].

The judgment of the Supreme Court of Arkansas was rendered and entered of record on the 9th day of June, 1941. R. 29.

The petition for writ of certiorari is filed herein before the expiration of three months from the date the decree and judgment of said Supreme Court of Arkansas was rendered and entered, which is within the time allowed by law.

2. *The statute.*

The validity of state legislation under the United States Constitution was drawn into question in this case and the decisions of each of the trial courts and the Supreme Court were wrongfully in favor of its validity. The legislation challenged here is an ordinance of the City of Fort Smith, Arkansas, which was in full force and effect at the time of the transaction in question, reading in words and figures as follows:

Ordinance No. 1172 for the violation of which the appellants, Lois Bowden and Zada Sanders, were convicted is as follows:

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF FORT SMITH:

Section 1. That the license hereinafter named shall be fixed and imposed and collected at the following rates and sums and it shall be unlawful for any person or persons to exercise or pursue any of the following vocations of business in the City of Fort Smith, Arkansas, without first having obtained a license therefor from the City Clerk and having paid for the same in gold, silver or United States currency as hereinafter provided.

Section 40. For each person peddling dry goods, notions, wearing apparel, household goods or other articles not herein or otherwise specifically mentioned $25.00 per month, $10.00 per week, $2.50 per day. A person, firm or corporation using two or more men in their peddling business $50.00 per annum.

Section 3 makes a violation a misdemeanor.

In holding that the ordinance is not unconstitutional because it abridges freedom of speech, press and worship in violation of the Fourteenth Amendment to the United States Constitution, the Supreme Court of Arkansas held that the statute properly applied to the activity of petitioners and decided in favor of its validity on its face and as so applied. R. 29-37.

Petitioners duly and properly urged in all the courts below that the said ordinance on its face and especially as applied and construed to them was invalid because it deprived them of above described rights contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

From the very beginning, therefore, the validity of the legislation here challenged as being in contravention of

the Fourteenth Amendment was thus drawn in question. The judgments of the trial courts were in favor of the validity of such ordinance and also, the Supreme Court of Arkansas found in favor of the validity thereof, overruling such federal questions.

C

Statement of the Case

A full statement of the case has been given herein (supra, pages 1 to 7) and for the sake of brevity will not be repeated but is here referred to.

D

Specification of Errors

Petitioners assign the following errors in the record and proceedings of said case:

The Supreme Court of Arkansas committed fundamental error in affirming the judgment of the Circuit Court by ruling that the petitioners were guilty of a violation of said ordinance of the City of Fort Smith, because the said ordinance is invalid, as construed and applied by the courts below, in that it deprives petitioners of their right of freedom of press, of speech, of conscience and of worship of Almighty God as commanded by Him in the Bible, contrary to the "due process" clause of the Fourteenth Amendment to the United States Constitution.

And for these reasons it is reversible error for the Supreme Court of Arkansas to affirm the judgment of conviction rendered by the Circuit Court and hold that the statute was valid and constitutional.

The Arkansas Supreme Court errs in holding that the ordinance as applied was a proper and valid exercise of the police power.

PRELIMINARY ARGUMENT

It is to be noted that the opinion, in addition to being extremely unsound and a radical departure from the applicable decisions of this Court in *Cantwell* v. *Connecticut*, supra, *Schneider* v. *Irvington*, supra, and *Lovell* v. *Griffin*, supra, is also in direct conflict with the following opinions and decisions declaring such laws invalid as applied to the above described activity of Jehovah's witnesses in preaching the Gospel of God's Kingdom, that is to say, the cases of *People* v. *Kieran et al.*, 26 N. Y. S. 2d 291, *Tucker* v. *Randall* (N. J.), 15 A. 2d 325, *Commonwealth* v. *Anderson* (Mass.), 32 N. E. 2d 684, *City of Gaffney* v. *Putnam* (South Carolina Supreme Court opinion rendered June 2, 1941), 15 S. E. 2d 130; *Semansky* v. *Stark, Sheriff*, 199 So. 129 (Louisiana), *Thomas* v. *Atlanta*, 59 Ga. App. 520, 1 S. E. 2d 598, *Cincinnati* v. *Mosier*, 22 N. E. 2d 418; 61 Ohio App. 81, *People* v. *Northum et al.*, 103 Cal. Supp. 295, 41 C. A. 2d 284, *Village of South Holland* v. *Stein*, 26 N. E. 2d 868 (Ill.). Each of the above cases involve Jehovah's witnesses shown to have been receiving contributions for the literature and working in the same way as petitioners were; and the ordinances and laws there held to be unconstitutional are substantially similar, if not identical to the statute here drawn in question.

ARGUMENT

The ordinance in question is invalid and unconstitutional as construed and applied by the courts below in that it deprives petitioners of their right of freedom of press, of speech, of conscience and of their right to worship Almighty God as commanded by Him in the Bible, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

The pernicious doctrine that constitutionally secured "free press" extends only to "*free* distribution" (or "gift") of literature is a new theory unheard of until modern-day totalitarian principles have pushed to the fore. Such erroneous claim means that a person would be entitled to the protection of the constitutional guarantees of freedom of press against statutes such as this if he gave away printed matter, but if he "sold" such matter he would not be entitled to this fundamental personal privilege. The claim is, therefore, *foolish*. Newspapers, magazines and other periodicals are sold daily on the streets and elsewhere in every community of this land. Money is received in exchange. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain great wealth through it. One who is doing good, such as the petitioners here, by constantly and continuously bringing printed matter on subjects of great importance to the attention of the public through "press activity" is entitled to let those receiving the information aid in keeping the "good work alive and going" by contributing a small sum with which to print more like literature. It is a ridiculous stalemate to hold that one must "go bankrupt" by forced "free" distribution of literature in order

to receive the "free press" protection of the Constitution. Such a reprehensible contention, if permitted to stand, means the "death toll" to freedom of press in America. The taking of money for the literature is only incidental to the main activity of petitioners. It is a means to an end, that is to say, further proclamation of the Kingdom message of Almighty God.

The theory advanced by the Arkansas Supreme Court would make constitutional guarantee of freedom of the press the sole prerogative of the rich. This would "sandbag" the Constitution and sabotage all the liberties of the people.

In the case of *Cantwell* v. *Connecticut,* supra, the Connecticut Supreme Court of Errors attempted to distinguish the conviction under the solicitation statute on the grounds that 'it was the soliciting contributions' that brought them within the terms of the statute, "and not their more predominant activity of distributing literature." That doctrine was rejected by this Court. The opinion in the instant case is also contrary to *Schneider* v. *Irvington,* supra, where the undisputed evidence showed that one of Jehovah's witnesses received money contributions for literature and was prosecuted under the ordinance "because she canvassed without a permit".

The undisputed evidence shows that the right which petitioners exercise is that of worshiping Almighty God by acting as *ordained ministers* in preaching the Gospel, and also press activity, and the action of the Fort Smith authorities in arresting and prosecuting them is in excess of their lawful authority; and it is the unconstitutional application of said statute to petitioners' activities that invalidates it.

It will be recalled that in the case of *Concordia Fire Insurance Co.* v. *Illinois,* 292 U. S. 535, 545, the court said:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment

often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

The petitioners are *ordained ministers* of the gospel of God's Kingdom or Theocracy, which is a righteous governernment that will be fully established in the earth very shortly. They possess credentials showing their ordination. They have entered into a covenant or agreement with Almighty God as provided in Isaiah 61 : 1, 2 and other scriptures to do the will of Almighty God, which is to preach or proclaim the judgments of Almighty God and His message of hope recorded in the Bible, to all people of good-will toward Almighty God. In order to enable such persons to flee from the Devil's organization to The Theocracy, and thus receive everlasting life under such righteous government, which will bring peace, prosperity and happiness to all who survive the battle of Armageddon — near at hand — Jehovah's witnesses preach the Gospel publicly throughout the land. To enable the petitioners to effectively thus preach the Gospel 'publicly and throughout every city until the cities are desolate' (Isaiah 6:11) the petitioners use books, booklets, magazines and pamphlets which contain the entire message. This literature they employ as a substitute for talking, or sermons, and which is more effective because it can be studied by the recipients in the quiet of the home. Thus much time is saved and more people are reached.

In thus acting, the petitioners are duly ordained ministers of the Gospel of Jehovah God's Kingdom. It cannot properly be said that such conduct does not constitute proper worship or service of Almighty God. This showing is conclusive upon all concerned in the matter. Furthermore, this Court has held that the individual alone is privileged to determine what he shall or shall not believe and how he shall exercise his right of conscience in performing such belief. The law of this land does not attempt to

settle differences of creed and confession, and will not say that any point, doctrine or practice is too absurd to be believed. *Reynolds* v. *United States,* 98 U. S. 145, 162, quoting from Jefferson's Virginia Statute of Religious Freedom; also, *United States* v. *Macintosh,* 283 U. S. 605, 634.

If the practice or belief does not involve a violation of the law of morals, invade the right of property, or imperil, by clear and present danger, the safety of the nation and state, then such cannot be interfered with by any kind or character of statute, whether valid or invalid. Being bound by the conclusion that petitioners are *ordained ministers,* what is next presented?

Attention of this Court is kindly drawn to the case of *Thomas* v. *City of Atlanta,* supra, where one of Jehovah's witnesses was convicted under an ordinance prohibiting peddling without a license. In reversing the conviction, the Georgia Court of Appeals said:

> "We do not think it is the duty of an ordained minister of the gospel to register his business with the city. Neither is it peddling for such minister to go into homes and play a victrola, or to preach therein or to sell or distribute literature dealing with his faith if the owner of such home does not object. The preaching and teaching of a minister of a religious sect is not such a business as may be required to register and obtain and pay for a license so to do. Neither is a sale by such minister of tracts or books connected with his faith a violation of a statute against peddling. Under the evidence in this case the sale of the book was collateral to the main object of the defendant, which was to preach and to teach his religion."

To the same effect is *Village of South Holland* v. *Stein,* supra, *Semansky* v. *Stark,* supra, *Cincinnati* v. *Mosier,*

supra, *Schneider* v. *Irvington,* supra, *Cantwell* v. *Connecticut,* supra.

The City of Fort Smith has no more authority to require petitioners, Jehovah's witnesses, to register than it would to require religious priests, religious clergy and religious rabbis of Fort Smith to register as a condition precedent to giving their sermons and conducting their different religions in the City. It is clearly apparent that such statute cannot be applied so as to interfere with or deprive petitioners of their right of worship. This is petitioners' *way* of worship and it cannot be denied because none of the exceptions can be found to exist which would warrant the denial of such right.

The *way* of worshiping Almighty God as done by petitioners in this case is commanded by the written law of Almighty God.

God's law is supreme. This rule is recognized by Blackstone in his Commentaries (Chase 3d ed., pp. 5-7). See also Cooley's *Constitutional Limitations,* 8th ed., p. 968. Petitioners greatly desire life and to live, and therefore they must serve Almighty God; for it is written that God is the fountain of life. (Psalm 36:9) One who desires to live must obey God's law. (John 17:3) Petitioners stand in the same position as Jesus Christ's apostles who, when haled before magistrates and requested to discontinue preaching the Gospel from house to house, as they did at the time of their arrest, and when ordered to desist, told the court, "We ought to obey God rather than men." (Acts 5:17-42) Thereafter, as it is written concerning them, "daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ."—Acts 5:42.

Should the petitioners cease to proclaim the written judgments of Almighty God by yielding to threats of police officials or for any other reason, they would violate the solemn agreement previously made by them to obey the law of Almighty God, who commands such proclamation to be made now, irrespective of persecution; and petitioners

would thereby subject themselves to everlasting destruction, as they verily believe. See Ezekiel 33:8, 9; Acts 3:22, 23.

The petitioners refuse to apply for a permit or license because they are *ordained ministers* of Almighty God, preaching the Gospel, and do not come within the provisions of the statute, and furthermore they choose to follow in the footsteps of the Master, Christ Jesus, and His apostles, who preached "publicly and from house to house" and who steadfastly refused to get "permits" from the "state" of their day, and refused to discontinue preaching when requested by the state to discontinue.

It would be an insult to Almighty God to apply to some man of the world, which is ruled over by Satan, for a permit or license to do that which God has *commanded* to be done under pain of everlasting death for refusal or failure on the part of Jehovah's witnesses to so preach, as He has plainly commanded.

Tested in the light of standards declared in the cases cited, the ordinance under which the petitioners were convicted cannot stand the test of the Fourteenth Amendment to the Constitution because on its face and as applied in this case there is a clear infringement by "prior censorship" of the press.

The ordinance gives the City Clerk complete control over the circulation of informative matter throughout the municipality. It is left to his discretion in granting permission based on his determination of what he considers proper.

The provision of this ordinance is very similar to the Irvington ordinance outlawed by this Court in *Schneider* v. *State,* described by this Court as inquisitorial. On authority of *Schneider* v. *State,* this ordinance should be declared invalid. In the *Schneider* case, Clara Schneider was shown to have done the same work as those petitioners were doing. Clara accepted money contributions for the books, yet this Court held that such conduct on her part did not bring her under the ordinance. The same thing was held

in *Cantwell* v. *Connecticut,* supra, also involving one of Jehovah's witnesses doing the same work as petitioners.

The pamphlets of Thomas Paine, William Lloyd Garrison, Alexander Hamilton, Martin Luther, and others, annoyed many people. It is impossible to circulate information on a vital issue without annoying someone, but such is the very life of free press and a free country and is not ground for *misapplying* a peddling-license ordinance, as is here done.

The State may not under the guise of 'reasonable police regulation' chisel off liberty of the press by subjecting that to license. The only fields of press activity which may be touched upon by law are (1) immoral and obscene matter, (2) seditious matter, (3) libel of individuals. None of these elements are found in the literature. By no stretch of the imagination can it be said that the literature comes within any of such limitations. There is nothing immoral or seditious about the literature. The undisputed evidence shows that the literature was not immoral and was not seditious. R. 10-13, 15-24.

There is no evidence that petitioners were guilty of disorderly conduct or interference with other people's rights, in distributing the literature. There is no evidence that they distributed the books or booklets at any unreasonable time. They are not charged with any of such; but even if they were, they could not be prosecuted and convicted under THIS ordinance providing for "license and tax".

Ordinances identical with this one when applied even to "sale of literature" have been rightly held invalid by courts of the world's greatest municipality (New York City). See the cases of *People* v. *Max Banks,* 6 N. Y. S. 2d 41, *People* v. *Samuel Finkelstein,* 2 N. Y. S. 2d 941, and cases cited.

Furthermore, it is clear that the activity of the petitioners was activity of the press and was and is such press activity protected by the Constitution. The homes are the

natural and proper places for the dissemination of such information (*Schneider* v. *Irvington,* supra) and this right cannot be denied or abridged on the theory that it can be better exercised elsewhere. The conveniences of the City of Fort Smith to keep desired conditions do not warrant licensing or abridgment. (*Schneider* v. *Irvington,* supra, *Cantwell* v. *Connecticut,* supra, *Hague* v. *C. I. O.,* 307 U. S. 496) The duty of the officials to maintain order does not warrant the prior censorship of the press which is permitted by the application of the statute to the facts in this case. *Hague* v. *C. I. O.,* supra, *Thornhill* v. *Alabama,* 310 U. S. 88, 95, *Grosjean* v. *American Press Company,* 297 U. S. 233, *De Jonge* v. *Oregon,* 299 U. S. 353, 364, *Stromberg* v. *California,* 299 U. S. 233, *Near* v. *Minnesota,* 283 U. S. 697, 707.

CONCLUSION

It is therefore submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that errors complained of may be corrected and that to such end a writ of certiorari ought to be granted that this Court review the decision of the Supreme Court of the State of Arkansas.

Confidently submitted,

JOSEPH F. RUTHERFORD
124 Columbia Heights
Brooklyn, New York

HAYDEN COVINGTON
117 Adams Street
Brooklyn, New York

Attorneys for Petitioners